U.S. Loss of 'Political' Trials Analyzed

4/20/75

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The federal government probably lost a series of controversial trials because some jurors perceived governmental misconduct or believed the motives of the defendants was justified, a Justice Department study shows.

The report was ordered last fall by then Attorney General William B. Saxbe to determine why the government had been unsuccessful in its prosecution of eight "political" trials, according to Justice Department spokesman Robert Havel.

Most of the 10-page report, filed with Saxbe in January but not made public until Friday, is a study of how defendants and their attorneys in the cases reviewed used disruptive tactics to frustrate the judge and prosecutor.

The cases reviewed by the Office of Policy and Planning included the Chicago Seven trial growing out of riots at the 1968 Democratic National Convention, the trial of the Gainesville Eight, involving charges of violence at the 1972 Republican National Convention by eight members of the Vietnam Veterans Against the War, and the Wounded Knee trial of leaders of the American Indian Movement.

In all eight cases, the government either failed to win convictions or the convictions were reversed on appeal.

The study leaves unexplored the question of whether the defendants in any of the cases should have been indicted and tried.

Rather, the report concludes that "disruption itself was not a major cause of the government's failure to obtain convictions in many of these trials." Courtroom disruptions are a symptom, not the cause, of the government's failure, according to the report.

The disruptions "encourage a disrespect for the system that in turn encourages people in their belief in governmental misconduct," the report said. "[They] perhaps suggest that a broader look at the decision to prosecute some controversial cases is called for.

"It seems more probable," the report said, "that these cases were lost because they were tried before juries at least partially composed of people willing to be convinced of government misconduct, or willing to believe the exculpatory motives alleged by the defense. The defense sought, and was able to evoke, the sense that the government used the legal system to legitimize or enforce unpopular policies or decisions."

The study, which included the Pentagon Papers trial of Daniel Ellsberg and Anthony Russo, also said that "we have found no evidence to suggest" the truth of claims that "political rather than legal motivations lay behind the decision to bring charges" in the cases.

The trial of former presidential aide John D. Ehrlichman, in connection with the Ellsberg break-in, and the Senate Watergate committee hearings produced numerous documents and transcripts of conversations between White House officials and other persons concerning their desire to discredit Ellsberg.

In a transcript of a July 2, 1971, telephone conversation with Watergate conspirator E. Howard Hunt Jr., special counsel to the President Charles W. Colson said, "This thing could go one of two ways. Ellsberg could be turned into a martyr of the new left—he probably will be anyway—or it could be another Alger Hiss case, where the guy is exposed, other people were operating with him, and this may be the way to really carry it out. We might be able to put this . . . into a helluva situation and discredit the new left."

Rarely, the report said, "has the conduct of the prosecutor been a significant factor in courtroom disruption . . ."

The lone exception, according to the report, was the Wounded Knee trial, which ended in September, 1974, with the dismissal of charges against AIM leaders Russell Means and Dennis Banks by the judge because of governmental misconduct in the trial.

"The prosecution was accused by the judge to have acted in bad faith in response to court orders," the report said. "There were allegations that the prosecution was at least highly negligent in failing to verify its chief witness' testimony, where there was reason to suspect that it had been fabricated in order to return a favor done by the FBI—that of getting the witness off rape charges in Wisconsin in order that he might give favorable testimony into the matter.

"We have obtained no evidence of the truth or falsity of these allegations," the report said, "since such in inquiry was beyond our resources. We understand that the FBI is conducting a further investigation into the matter."